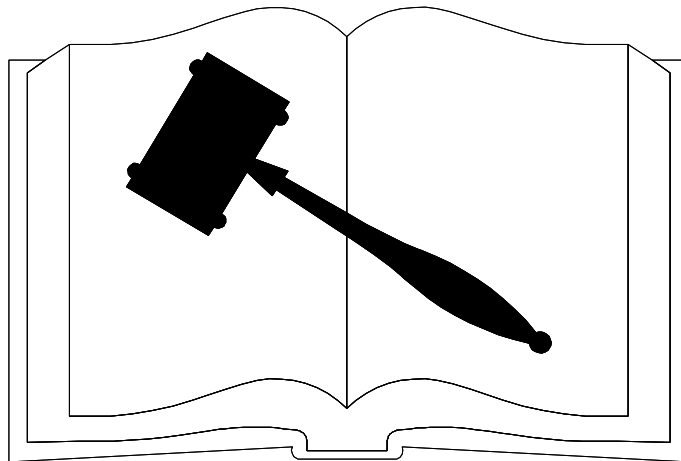

Unit 3: Legal aspects of transporting children with special needs

Overview

Unit 3 is a brief overview of legal concepts involved in transporting children with special needs.

The unit summarizes key laws and terms drivers transporting children with special needs should be aware of.



Unit 3 Framework

Core Content Outline 3.1. Unit 3 introduction 3.2. Key laws 3.3. Key concepts 3.4. Liability 3.5. Unit 3 review	Objectives By the conclusion of this unit, drivers will be able to: 1. Identify key special education laws and describe their importance. 2. Define the acronyms IEP, FAPE, and LRE and explain their importance in providing an education to children with disabilities 3. Describe three ways drivers can protect themselves and their employers from potential liability when transporting children with special needs.
Suggested Time 30 minutes	Preparation 1. Review Best Practice Backgrounders regarding key laws, concepts, and liability 2. Overhead projector, screen, and transparencies in place

UNIT 3.1
CORE CONTENT
Unit 3 introduction

**BEST PRACTICE
BACKGROUNDER**

Importance of understanding the legal background of special education. Bus drivers don't need to be lawyers, but a basic understanding of the legal background of special education is important. Understanding the legal background can help drivers transporting children with disabilities do their jobs safely and professionally.

Knowledge of key special education laws allows drivers to appreciate the importance of their role in a major social transformation.

Understanding important special education concepts helps drivers maintain a positive attitude when confronted with unfamiliar and challenging situations on their buses.

Laws and legal terms intimidate many bus drivers, like many Americans. Trainers must take care to focus on the core concepts involved, and to explain why laws are important to bus drivers.



Instructional Strategies

Discussion questions

- ✓ *Why is an understanding of the legal background of special education important to transportation staff?*

Overhead transparencies

- ✓ *Overhead 3-1: "Legal Aspects of Transporting Children with Special Needs"*

Workbook

- ✎ *3-1*

UNIT 3.2
CORE CONTENT
Key laws

**BEST PRACTICE
BACKGROUND**

Benchmark laws. The right of students with disabilities to receive an education, and transportation as a related service, is firmly established in two federal statutes:

- The Rehabilitation Act of 1973 (usually referred to as Section 504)
- The Individuals with Disabilities Education Act (IDEA)

14th Amendment. As discussed in Unit 1.2, “How Far We’ve Come,” the historical roots of these benchmark special education laws lie in the 14th Amendment to the U.S. Constitution. The 14th Amendment prohibits discrimination by requiring states to provide equal protection of the laws to all citizens.

Section 504. Passed as Public Law 93-112 in 1973, Section 504 constituted the first national declaration of the rights of the disabled. It prohibits discrimination against individuals with disabilities by any recipient of federal funding. The major goal of the law was to remove the barriers that limit services to what was at the time referred to as “handicapped” individuals. For over two decades, Section 504 has been the basis for filing complaints with school districts about transportation problems impacting children with special needs, such as:

- Denial of transportation to extra-curricular programs.
- Overly long bus ride.
- Loss of instructional time due to length of bus ride.

- Suspension from the bus due to discipline problems caused by a child’s disability.
- Segregation of children with disabilities from non-disabled peers on the bus.

The federal Office of Civil Rights enforces Section 504 and has forced school districts to discontinue such practices.

Individuals with Disabilities Education Act (IDEA).

Originally passed in 1975 as Public Law 94-142, the Education for All Handicapped Act, and amended several times since then, the law required school districts to educate children with disabilities. IDEA has had a profound and continually expanding impact on education in the United States. Key elements of IDEA include:

- A system for identifying and evaluating children with special needs.
- Definitions of categories of special needs.
- Due process procedures for

parents challenging school districts about their children’s education. Attorney’s fees may be covered for parents who prevail in a court challenge.

- Transportation is a key related service for helping children with disabilities to receive an education.
- Staff must be appropriately trained in special needs.
- Early intervention programs for disabled preschoolers, including children from birth through two years old.

Americans with Disabilities Act (ADA). Passed in 1990, ADA extended legal protections to adults throughout society.

Instructional Strategies

Discussion questions

- ✓ *How have Section 504 and IDEA affected education in the United States?*
- ✓ *How have they affected school bus transportation?*

Overhead transparencies

- ✓ *Overhead 3-2: “Key Laws”*

Workbook

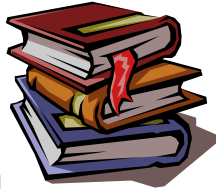
- ✎ *3-2*

UNIT 3.3
CORE CONTENT
Key concepts

**BEST PRACTICE
BACKGROUND**

Four key concepts should be understood by everyone involved in providing educational services to children with special needs.

Free and Appropriate Public Education (FAPE). IDEA guarantees a “free and appropriate public education” including special education and related services to all children with disabilities. This federal mandate means school districts cannot legally exclude a child from school regardless of the severity or uniqueness of the disability, and regardless of the complexities and expense involved in the special services needed. Numerous court interpretations over the years have extended this mandate to children with increasingly severe disabilities.



Least Restrictive Environment (LRE). IDEA also requires that children with disabilities be educated with non-disabled children to the maximum extent appropriate, and that education occurs in the “least restrictive environment.” This requirement means merely providing educational services to children with disabilities is not sufficient. If the child is segregated from his or her peers, the school district may still be in violation of IDEA.

Inclusion. The concept of least restrictive environment is the driving force behind the move towards full inclusion, which aims to disband “separate but equal” educational programs for children with special needs and integrate them fully into regular classrooms and onto regular buses.

Individualized Education Program (IEP). IDEA requires that each child who has been identified as in need of special education services must have an Individualized Education Program. The IEP guides the delivery of services for the child. Each child’s IEP must be an individualized document, and is created by teachers, parents (parents must be included in the process), school administrators, related services personnel including transportation, and students when appropriate. IEPs must be reviewed at least once a year.

Some key aspects of IEPs for bus staff include:

- Transportation is considered a related service under IDEA and special transportation needs should be identified on the IEP.
- An IEP is a legal document with the force of law. When special transportation arrangements are listed in an IEP, the school district is

mandated to provide the service. For instance, if the IEP states that a bus aide must accompany the child, there is no allowance for sending the child without the aide even for a single day.

- The annual review must assess the child’s progress at school. This review should include the bus ride.
- IEPs must identify annual goals for the child. The bus ride can be considered as part of a child’s goals. “Travel training” is sometimes listed as a specific goal for an older child who is transitioning to vocational training or employment.

Instructional Strategies

Discussion questions

- ✓ *What is an IEP and how does it affect transportation?*

Overhead transparencies

- ✓ *Overhead 3-3: “Key Terms and Concepts”*

Workbook

- ✎ *3-3*

BEST PRACTICE BACKGROUND

Natural concerns. When laws are discussed, drivers often have questions about liability.

The concern about potential liability is understandable. Because of the unique responsibility involved in transporting children, transporters are often held to a high legal standard in court.

Ensuring children's safety is a school bus driver's most important goal. But in today's world, where litigation is commonplace, protecting both the bus driver and the employer from unreasonable lawsuits is also important.

What is liability? Liability means the legal responsibility for an unfortunate event. In civil lawsuits, liability determines financial responsibility for physical or other losses.

Usually, several conditions must exist before an individual can be held liable:

- An injury or loss must have occurred.
- The individual must have had a clear duty towards the injured party.
- A direct link between the individual's actions or omissions and the injury must be established.
- A reasonable person would have been expected to prevent the injury in like circumstances.

Gross negligence. In civil cases involving serious injuries or fatalities, juries sometimes find individuals not only liable but also guilty of "gross negligence." Gross negligence can increase liability; in extreme cases, juries may award punitive damages

beyond financial compensation for the actual loss.

3 mistakes to avoid. Gross negligence may exist when it can be proven an individual not only made a mistake but was "willfully indifferent" to a child's safety, such as:

1. The school bus driver knowingly broke a law or regulation, resulting in an injury or fatality.
2. The driver failed to follow a clearly stated school or company policy or procedure, resulting in an injury or fatality.
3. The driver knowingly ignored a hazardous condition that resulted in an injury or fatality.

Specific acts that have led to findings of gross negligence against bus drivers in civil suits (along with criminal convictions, in some cases) include:

- Bus driver use of drugs or alcohol.
- Bus driver failure to conduct a postcheck of the bus, leaving child on board.
- Bus driver off approved route.

UNIT 3.4 CORE CONTENT *Liability*

- Bus driver was making a pickup or drop-off at an unauthorized bus stop.
- Bus driver forced child off bus in spite of child's pleas to get off someplace else that day.
- Bus driver suspended and refused to transport child without school approval, parent notification, etc.
- Bus driver failed to stop or report sexual harassment against a child.
- Bus driver moved bus while child was visible nearby, or failed to heed warnings from students or others nearby that a child was at risk of injury.

In general, school bus drivers expose themselves to personal civil liability when their actions are not approved or directed by their supervisors.

Complexity. Laws and liability are not simple. For specific legal questions, expert advice from an attorney may be necessary.

Instructional Strategies

Discussion questions

- ✓ *How can potential liability be reduced?*

Overhead transparencies

- ✓ *Overhead 3-4: "Liability: 3 Mistakes to Avoid"*

Workbook

- ✎ *3-4*

BEST PRACTICE BACKGROUND

Laws can be intimidating.

Other than lawyers, few people feel comfortable discussing laws, and some drivers may feel intimidated by the contents of this unit. A careful review is important.

This unit examined key laws and concepts pertaining to educating and transporting children with disabilities. Drivers should be familiar with how each of the following laws have affected special education and school bus transportation:

1. Section 504 – Rehabilitation Act
2. Individuals with Disabilities Education Act

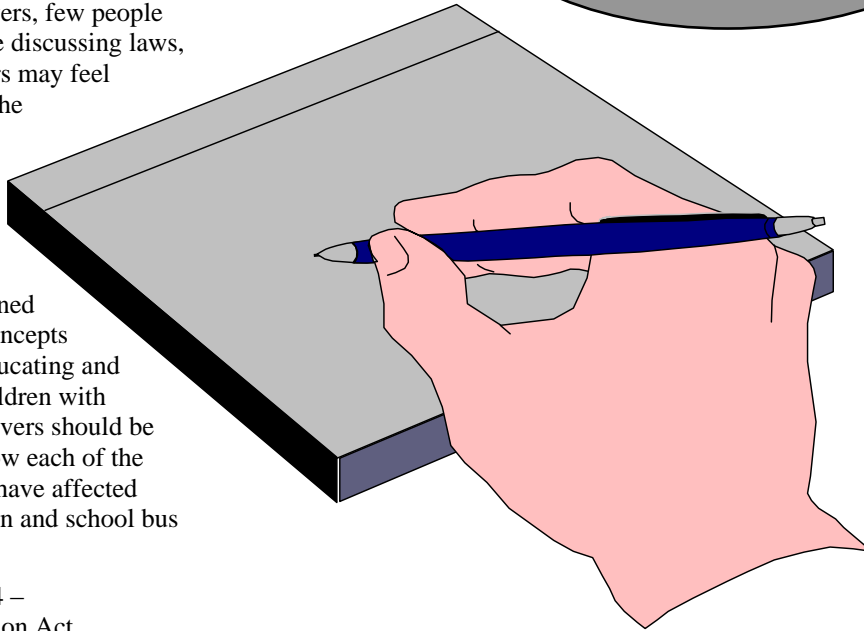
Drivers should also be able to define and understand the meaning of the following acronyms and terms:

- FAPE
- LRE
- Inclusion
- IEP

Drivers should also clearly understand the importance of avoiding mistakes that could lead to potential liability.

Before closing, strongly encourage drivers to ask questions about laws, legal concepts, and liability. Any confusions or misconceptions should be corrected.

Make sure the unit's three objectives were attained.



UNIT 3.5 CORE CONTENT *Unit 3 review*

Instructional Strategies

Review questions

- ✓ *What two federal laws extended educational opportunities to children with special needs?*
- ✓ *What do FAPE, LRE, and IEP stand for, and how are they important to transporters?*
- ✓ *What's the best way to reduce potential liability when transporting children?*

Overhead transparencies

- ✓ *Overhead 3-5: "Unit 3 Review"*

Workbook

- ✎ 3.5